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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

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Amendment of Section 73.622(b), )  
Table of Allotments, )  
Digital Television Broadcast Stations, )  
(Fort Myers, Florida) )

MM Docket No. 00-180  
RM-9956

To: Chief, Video Service Division  
Mass Media Bureau

**REPLY COMMENTS OF**  
**FORT MYERS BROADCASTING COMPANY**

Fort Myers Broadcasting Company ("FMBC") submits the following reply to the comments filed in this proceeding by Post-Newsweek Stations Florida, Inc. ("Post") and Cox Broadcasting, Inc. ("Cox"). Therein Post and Cox urge the Commission to abandon its present technical standards for assigning DTV Channels to existing NTSC stations, and to apply new technical standards to deny FMBC's proposal to substitute DTV Channel 9 for DTV Channel 53 in Fort Myers, Florida.

FMBC submits that the comments filed by Post and Cox are, essentially, late-filed petitions for reconsideration of the DTV allotment standards adopted in MM Docket No. 87-268.<sup>1</sup> Post, for example, concedes that FMBC's proposal meets the Commission's de minimis interference standard, but goes on the argue that de minimis interference will have "grave consequences" and that any loss

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<sup>1</sup> See Rule 73.263. See also Sixth Report and Order MM Docket No. 87-268, 12 FCC Rcd. 14588 (1997) (the "Sixth Report and Order"); modified, Memorandum Opinion and Order on Reconsideration of Sixth Report and Order, 13 FCC Rcd. 7418 (1998) (the "Reconsideration Order"); modified, Second Memorandum Opinion and Order and Reconsideration of the Fifth and Sixth Report and Orders., 14 FCC Rcd. 1348 (1998) (the "Second Reconsideration Order").

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of service is prima facie inconsistent with the public interest. This is nonsense. De minimis interference is, by definition, a level of interference having no significant effect. Rule 73.623(c)(2) explicitly permits the level of interference present in FMBC's proposal. This rule, itself, presumptively serves the public interest. See Carolina Broadcasting, Co., 16 RR 2d 801, 803 (1969). The cases cited by Post are waiver cases. FMBC is not asking the Commission to waive its rules. Instead, FMBC is asking the Commission to apply its rules.

Similarly, Post urges the Commission to weigh loss of LPTV service in evaluating FMBC's proposal. However, this is a factor the Commission specifically refused to consider in developing the DTV Table of Allotments. See Reconsideration Order, 13 FCC Rcd at 7461.

Post acknowledges that FMBC's present DTV allotment for WINK-DT is outside the core DTV allotments, but argues that this should not be factor in assessing FMBC's proposed in-core allotment. However, in the Reconsideration Order the Commission recognized the burden placed on licenses with out-of-core DTV allotments and committed "to further reduce the number of out-of-core allotments in any future amendments to the Table." 13 FCC Rcd. at 7440-41.

Post makes the rather astounding assertion that the out-of-core allotment of DTV Channel 53 to FMBC's Fort Myers station "is in itself strong evidence that no other suitable DTV Channel is available." The fact is that DTV Channel 53 was assigned to Fort Myers under a technical scheme that made no allowance for de minimis interference. See Sixth Report and Order. The technical standards supporting FMBC's allotment proposal were adopted almost a year later in the Reconsideration Order. Had the Commission achieved the perfect Table of DTV Allotments in the Sixth Report and Order, it would have had no need to revise its technical standards on reconsideration.

The Post is far less enamored of the Commission's DTV technical standards than its "Channel 53, the best of all possible allotments," argument might suggest. The Post actually wants the Commission to evaluate FMBC's allotment proposal under new DTV interference criteria that the Post has created to reflect "real world" television propagation characteristics in Florida. Remarkably, one of the factors the Post seeks to change in its calculation of "real world" interference is the front-to-back ratio of typical consumer receiving antennas. This is not a factor that is specific to the State of Florida, or to Zone III. It would apply anywhere a DTV allotment is made. Clearly, the Post's "Real World" interference criteria involve a wholesale rejection of the technical standards underpinning the DTV Table of Allotments.

It goes without saying that the Post's own in-core DTV allotment in Miami was not made on the basis of the Post's super refraction theories of DTV propagation. Neither was any other DTV allotment in Zone III. Query whether consistent application of the Post's DTV interference theories to Zone III allotments would result in a massive restructuring of the DTV Table of Allotments?

FMBC notes that its proposed substitution of DTV Channel 9 for DTV Channel 53 is consistent with numerous allotments made and proposed in Zone III. As demonstrated in the attached Engineering Statement of Charles Cooper of Du Treil Ludin, and Rackley, at least 21 DTV allotments in Zone III have been made at similar spacings. Under the present DTV Table of Allotments, FMBC's own NTSC broadcast operations on WINK-TV's Channel 11 will receive amounts of DTV interference far in excess of the interference to Cox and Post from FMBC's requested DTV Channel 9 allotment. FMBC submits that there is no rational basis for treating its allotment proposal differently from the numerous similarly situated Zone III DTV allotments. See Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965). The Post's request that FMBC's

allotment proposal be treated dissimilarly from other Zone III DTV allotments is an invitation to error.

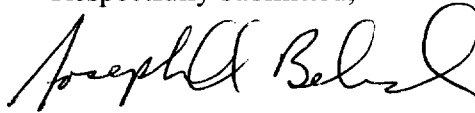
FMBC submits that Cox's comments fall into the same error as the Post's. They, too, propose a deviant technical standard for evaluating FMBC's requested DTV allotment. Cox and the Post also argue that the financial benefits associated with FMBC's in-core DTV proposal are not public interest factors justifying allotment of DTV Channel 9 to Fort Myers. These arguments are contrary to Commission precedent considering financial benefits in DTV allotment proceedings. See e.g. Monroe, Louisiana 14 FCC Rcd. 12384. (Video Services Div. 1999); Corpus Christi, Texas, 14 FCC Rcd. 15242 (Video Services Div. 1999); and Panama City, Florida, 14 FCC Rcd. 18555 (Video Services Div. 1999).

Cox voices concern that FMBC might continue to operate a Channel 9 DTV station in Fort Myers after the transition from analog to digital television has been completed. FMBC's present plans are to migrate WINK-DT to WINK-TV's Channel 11 at the end of the DTV transition period. Allotment of DTV Channel 9 to Fort Myers will facilitate a migration of DTV operations to Channel 11. It allows a transition to Channel 11 operations without requiring the wholesale replacement of UHF digital television equipment that would otherwise be necessary if WINK-DT operated on DTV Channel 53. Absent some unforeseen event requiring a change of its plans, FMBC will ultimately operate WINK-DT as a Channel 11 facility.

FMBC submits that its proposed substitution of DTV Channel 9 for DTV Channel 53 at Fort Myers, Florida meets all technical requirements for reassignment of a DTV Channel for station WINK-DT. It removes a DTV operation from non-core spectrum. It facilitates the migration of WINK-DT to Channel 11 at the end of the DTV transition period. It reduces costs to FMBC,

avoiding financial burdens that might otherwise impact on the programming service available from WINK-TV within its service area. FMBC's proposal is consistent with numerous DTV allotments made and proposed in Zone III. The Commission should grant FMBC's proposal and allot DTV Channel 9 to Fort Myers, Florida.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph A. Belisle". The signature is fluid and cursive, with the first name "Joseph" and last name "Belisle" clearly distinguishable.

Joseph A. Belisle  
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December 8, 2000

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TECHNICAL EXHIBIT  
PREPARED IN SUPPORT OF  
RESPONSE TO COMMENTS SUBMITTED IN THE  
NOTICE OF PROPOSED DTV RULE MAKING  
FORT MYERS, FLORIDA

Technical Statement

This Technical Statement and the associated Figure has been prepared in support of the response to comments submitted in the proposal for WINK-DT to substitute a Channel 9 DTV allotment for Channel 53 at Fort Myers, Florida.

Background

WINK-DT was allocated Channel 53 by the Commission for its interim digital operations. Recently, WINK-DT has requested the substitution of Channel 9 for Channel 53.<sup>1</sup> Within the request for Channel 9, WINK-DT demonstrated that only *de minimis* interference would be created toward other stations. This is in compliance with Section 73.623(c) of the Commission's Rules permitting such changes in DTV allotments.

Two comments were received by WINK-DT with regard to the proposed Channel 9 Allotment, Cox Broadcasting, Inc. ("Cox") and Post-Newsweek Stations, Florida, Inc. ("Post-Newsweek").

While both of the comments acknowledged that the proposed WINK-DT satisfies the Commission's 2 percent *de*

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<sup>1</sup> Notice of Proposed Rule Making, Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Fort Myers, Florida), MM Docket No. 00-180, released October 2, 2000.

*minimis* interference requirements,<sup>2</sup> it is noted, *ab inconvenienti*, that the WINK-DT minimum distance separations to other stations and allotments are not satisfied.

#### Separation Distances

Both comments are concerned that the proposed minimum distance separations for new DTV allotments, defined in Section 73.623(d) of the Commission's Rules, from the proposed Fort Myers Channel 9 to other stations and allotments, are not satisfied. However, pursuant to Section 73.623(d), a *Petition for Rule Making* to modify an allotment included within the initial DTV table, such as this instant Rule Making, is not required to demonstrate compliance with this section.

Moreover, the separation distances from the proposed Channel 9 to co-channel WPLG-DT at Miami and WFTV(TV) at Orlando are not unusual, even for Zone III. The separation distance from the proposed WINK-DT to WPLG-DT is 180.1 kilometers and from WINK-DT to WFTV(TV) is 210.8 kilometers.

Figure 1 contains a tabulation of the shortest separation distances by channel from co-channel DTV allotments or authorized facilities to licensed NTSC stations. This is comparable to the WINK-DT to WFTV(TV) situation.

As can be identified in Figure 1, there are at least 21 co-channel NTSC and DTV allotments or

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<sup>2</sup> Cox comments, Engineering Statement, page 2 and Post-Newsweek comments, Engineering Comments, page 1.

authorizations in Zone III that are separated by less than 210.8 kilometers, the proposed WINK-DT/WFTV(TV) separation distance. This includes a Channel 13 proposed DTV allotment at Corpus Christi, Texas. Furthermore, there are 3 VHF co-channel DTV-NTSC situations with separation distances within 7.1 kilometers (4.3 miles), of the WINK-DT and WFTV(TV) separation distance. Of those 3 VHF stations, it is interesting to note that WINK-TV itself is located only 212.2 kilometers from WESH-DT at Daytona Beach, Florida.

With respect to DTV-DTV separation distances, as in the case of WINK-DT to WPLG-DT, it is noted that co-channel UHF stations WPCT-DT in Panama City Beach, Florida and WPMI-DT at Mobile, Alabama have authorizations that are separated by 182.0 kilometers. This distance is just 1.9 greater than the proposed WINK-DT to WPLG-DT. WPCT-DT and WPMI-DT are also located in Zone III.

Furthermore, there is a *Petition For Rule Making* to substitute DTV Channel 13 for Channel 50 at Corpus Christi, Texas.<sup>3</sup> This Zone III Channel 13 allotment would only be 175.9 kilometers from another Zone III co-channel DTV allotment at Weslaco, Texas. This is 4.2 kilometers lower than the proposed WINK-DT and WPLG-DT separation distance. According to the Commission's Electronic Comments Filing System (ECFS) as of December 7, 2000, no comments opposing this allotment were filed in this proceeding.<sup>4</sup>

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<sup>3</sup> Notice of Proposed Rule Making, Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Corpus Christi, Texas), MM Docket No. 00-198, released October 13, 2000.

<sup>4</sup> Comments in MM Docket 00-198 were due December 4, 2000.



Interference to WINK-TV (NTSC)

WINK-TV on NTSC Channel 11 is also subjected to receive DTV interference within its existing service area, at a level much greater than WFTV(TV) and WPLG-DT. Using the Commission's DTV interference calculation procedure, OET Bulletin 69, WINK-TV is predicted to receive new interference from DTV allotments and authorized facilities to 76,468 persons within its Grade B contour. This is 6.7 percent of WINK-TV's baseline population.

As a comparison, WFTV(TV) in Orlando is predicted to receive new interference from DTV allotments and authorized facilities to only 26,129 persons within its Grade B contour. The WPLG-DT proposed facility (30 kW - BLCDT-20000501ADQ) is predicted to receive DTV interference to 25,835 persons. The WPLG-DT allotment is predicted to receive DTV interference to 25,947 persons. Both the WFTV(TV) and WPLG-DT interference values include the impact from the proposed Fort Myers Channel 9 DTV facility. Therefore, WFTV(TV) and WPLG-DT are predicted to receive new DTV interference at a level approximately  $1/3^{\text{rd}}$  of that WINK-TV is predicted to receive.



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December 7, 2000

TECHNICAL EXHIBIT  
PREPARED IN SUPPORT OF  
RESPONSE TO COMMENTS SUBMITTED IN THE  
NOTICE OF PROPOSED DTV RULE MAKING  
FORT MYERS, FLORIDA

Tabulation of Shortest Distance Separations by Channel from  
Co-Channel Licensed NTSC Stations to  
DTV Allotments or Authorizations in Zone III

(Sorted by VHF/UHF and Distance)

Channel	DTV Station	NTSC Station	Distance (km)
13	KRIS-DT Corpus Christi, TX (Rule Making Petition)	KVTV-TV Laredo, TX	191.0
11	WESH-DT Daytona Beach, FL	WINK-TV Fort Myers, FL	212.2
9	KUHT-DT Houston, TX	KTRE-TV Lufkin, TX	215.1
8	WSVN-DT Miami, FL	WWFD-TV Key West, FL	217.9
10	WJXX-DT Orange Park, FL	WTSP-TV St. Petersburg, FL	229.1
12	WTVT-DT Tampa, FL	WPEC-TV West Palm Beach, FL	243.2
7	WFLA-DT Tampa, FL	WJCT-TV Jacksonville, FL	278.6
5	KPXB-DT Conroe, TX	KALB-TV Alexandria, LA	277.4
2	WTWC-DT Tallahassee, FL	WESH-TV Daytona Beach, FL	336.4
3	WEYS-DT Key West, FL	WEDU-TV Tampa, FL	365.8
22	WOFL-DT Orlando, FL	WCLF-TV Clearwater, FL	144.4
46	WHFT-DT Miami, FL	WTVK-TV Naples, FL	153.1
26	WPXM-DT Miami, FL	WZVN-TV Naples, FL	155.0
49	WFGC-DT Palm Beach, FL	WRXY-TV Tice, FL	158.1
52	WWSB-DT Sarasota, FL	WTGL-TV Cocoa, FL	165.3
19	KTXH-DT Houston, TX	KVCT-TV Victoria, TX	165.8
24	WTSP-DT St. Petersburg, FL	WMFE-TV Orlando, FL	169.8
36	WPXP-DT Lake Worth, FL	WFTX-TV Cape Coral, FL	171.2
51	WTGL-DT Cocoa, FL	WOGX-TV Ocala, FL	181.1
20	WLRN-DT Miami, FL	WBBH-TV Fort Myers, FL	182.3

**Figure 1**  
**Sheet 2 of 3**

Channel	DTV Station	NTSC Station	Distance (km)
33	WRXY-DT Tice, FL	WBFS-TV Miami, FL	182.4
27	KORO-DT Corpus Christi, TX	KLDO-TV Laredo, TX	186.9
16	WCJB-DT Gainsville, FL	WUSF-TV Tampa, FL	187.6
41	WEIQ-DT Mobile, AL	WIIQ-TV Demopolis, AL	189.4
35	WFTX-DT Cape Coral, FL	WBXM-TV Miami, FL	192.9
44	WJEB-DT Jacksonville, FL	WGVP-TV Valdosta, GA	199.5
25	WBSV-DT Venice, FL	WPBF-TV Tequesta, FL	200.0
28	WGFL-DT High Springs, FL	WFTS-TV Tampa, FL	200.4
50	WTVX-DT Fort Pierce, FL	WBHS-TV Tampa, FL	201.7
34	WHBR-DT Pensacola, FL	WDFX-TV Ozark, AL	204.8
42	WXPX-DT Bradenton, FL	WXEL-TV West Palm Beach, FL	219.6
15	WGNO-DT New Orleans, LA	KADN-TV Lafayette, LA	222.2
30	WBCC-DT Cocoa, FL	WAWS-TV Jacksonville, FL	228.0
29	KYLE-DT Bryan, TX	KABB-TV San Antonio, TX	235.9
45	WJTC-DT Pensacola, FL	WMCF-TV Montgomery, AL	239.7
18	WMAU-DT Bude, MS	KLTL-TV Lake Charles, LA	240.8
17	WALB-DT Albany, GA	WJWB-TV Jacksonville, FL	249.2
14	WAIZ-DT Montgomery, AL	WABW-TV Pelham, GA	249.2
21	WCLF-DT Clearwater, FL	WTCE-TV Fort Pierce, FL	250.6
31	WOGX-DT Ocala, FL	WFXL-TV Albany, GA	263.7
40	WPAN-DT Fort Walton Beach, FL	WTWC-TV Tallahassee, FL	265.5
39	KWEX-DT San Antonio, TX	KHTV-TV Houston, TX	269.5
32	WBFS-DT Miami, FL	WWWB-TV Lakeland, FL	269.8
48	WXXV-DT Gulfport, MS	WNTZ-TV Natchez, MS	271.0
59	WTOG-DT St. Petersburg, FL	WJEB-TV Jacksonville, FL	277.6
47	WBHS-DT Tampa, FL	WTEV-TV Jacksonville, FL	278.2
55	WPTV-DT West Palm Beach, FL	WACX-TV Leesburg, FL	280.5
58	WHLT-DT Hattiesburg, MS	WAWD-TV Fort Walton Beach, FL	283.9
57	WTTA-DT St. Petersburg, FL	WFXU-TV Live Oak, FL	308.9

**Figure 1**  
**Sheet 3 of 3**

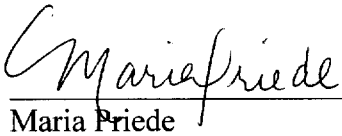
Channel	DTV Station	NTSC Station	Distance (km)
23	KL TJ-DT Galveston, TX	KHCE-TV San Antonio, TX	339.3
38	WFSG-DT Panama City, FL	WNOL-TV New Orleans, LA	389.2
43	WDSU-DT New Orleans, LA	WGIQ-TV Louisville, AL	475.1
56	KLFY-DT Lafayette, LA	WFSG-TV Panama City, FL	611.4
53	WINK-DT Fort Myers, FL	WPAN-TV Fort Walton Beach, FL	648.9
54	WEDU-DT Tampa, FL	WUPL-TV Slidell, LA	791.7

## CERTIFICATE OF SERVICE

I, Maria Priede, hereby certify that I have this 8<sup>th</sup> day of December, 2000 caused a copy of the foregoing "Reply Comments of Fort Myers Broadcasting Company" to be delivered by U.S. First Class Mail, postage prepaid, to the following:

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